

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Kayla Wefelmeyer,

Case No. 0:17-cv-00172-RHK-KMM

Plaintiff,

v.

**REPORT AND  
RECOMMENDATION**

Bloomington Hooters, Inc.,

Defendant.

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Kayla Wefelmeyer, pro se

Gina K. Janeiro and Jennifer Nodes, Jackson Lewis, P.C., counsel for defendant

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When this action began, the plaintiff, Kayla Wefelmeyer, was represented by counsel. However, she later terminated her attorneys' representation and the Court allowed counsel to withdraw. The Court denied without prejudice Ms. Wefelmeyer's pending motion to amend the complaint because it had been filed by her prior counsel and it was unclear whether Ms. Wefelmeyer intended to pursue the relief her counsel sought in that motion on her behalf.

On two occasions since then, the Court has instructed Ms. Wefelmeyer to indicate whether she intends to pursue this action. ECF No. 33, 36. The Court first instructed Ms. Wefelmeyer to inform the Court of her intentions regarding the litigation on May 9, 2017. ECF No. 33. The Court's May 9th Order notified Ms. Wefelmeyer that failure to contact the Court could be construed as abandonment of the action and might result in dismissal for failure to prosecute. *Id.* After Ms. Wefelmeyer failed to contact the Court in response to the May 9th Order, the Court extended the deadline for her to contact the Court. ECF No. 36. Ms. Wefelmeyer was

again cautioned that if she failed to communicate with the Court by June 30, 2017, the Court would recommend that this action be dismissed for failure to prosecute. *Id.*

Ms. Wefelmeyer has not yet contacted the Court. This Court now recommends, in accordance with its prior orders, that this action be dismissed without prejudice for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

### **RECOMMENDATION**

Based on the foregoing, and on all of the files, records, and proceedings herein,  
**IT IS HEREBY RECOMMENDED THAT:**

1. This action be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) for failure to prosecute.
2. The Clerk of Court is directed to send a copy of this Report and Recommendation to Ms. Wefelmeyer at the following addresses.

Kayla Wefelmeyer  
7312 155th Street  
Apple Valley, MN 55124

Kayla Wefelmeyer  
2236 East 86th Street #222  
Bloomington, MN 55425

Date: August 2, 2017

s/ Katherine Menendez  
Katherine Menendez  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.